

109TH CONGRESS
1ST SESSION

S. 477

To amend the Homeland Security Act of 2002 to include Indian tribes among the entities consulted with respect to activities carried out by the Secretary of Homeland Security, and for other purposes.

IN THE SENATE OF THE UNITED STATES

MARCH 1, 2005

Mr. DORGAN (for himself and Mr. INOUE) introduced the following bill; which was read twice and referred to the Committee on Homeland Security and Governmental Affairs

A BILL

To amend the Homeland Security Act of 2002 to include Indian tribes among the entities consulted with respect to activities carried out by the Secretary of Homeland Security, and for other purposes.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Tribal Government
5 Amendments to the Homeland Security Act of 2002”.

6 **SEC. 2. FINDINGS AND PURPOSES.**

7 (a) FINDINGS.—Congress finds that—

1 (1) there is a government-to-government rela-
2 tionship between the United States and each Indian
3 tribal government;

4 (2) through statutes and treaties, Congress has
5 recognized the inherent sovereignty of Indian tribal
6 governments and the rights of Native people to self-
7 determination and self-governance;

8 (3) each Indian tribal government possesses the
9 inherent sovereign authority—

10 (A)(i) to establish its own form of govern-
11 ment;

12 (ii) to adopt a constitution or other organic
13 governing documents; and

14 (iii) to establish a tribal judicial system;
15 and

16 (B) to provide for the health and safety of
17 those who reside on tribal lands, including the
18 provision of law enforcement services on lands
19 under the jurisdiction of the tribal government;

20 (4) tribal emergency response providers, such
21 as tribal emergency public safety officers, law en-
22 forcement officers, emergency response personnel,
23 emergency medical personnel and facilities (including
24 tribal and Indian Health Service emergency facili-

1 ties), and related personnel, agencies, and authori-
2 ties—

3 (A) play a crucial role in providing for the
4 health and safety of those who reside on tribal
5 lands; and

6 (B) are necessary components of a com-
7 prehensive system to secure the homeland of
8 the United States;

9 (5) there are more than 25 Indian tribes that
10 have primary jurisdiction over—

11 (A) lands within the United States that is
12 adjacent to the Canadian or Mexican border; or

13 (B) waters of the United States that pro-
14 vide direct access by boat to lands within the
15 United States;

16 (6) the border lands under the jurisdiction of
17 Indian tribal governments comprises more than 260
18 miles of the approximately 7,400 miles of inter-
19 national border of the United States;

20 (7) numerous Indian tribal governments exer-
21 cise criminal, civil, and regulatory jurisdiction over
22 lands on which dams, oil and gas deposits, nuclear
23 or electrical power plants, water and sanitation sys-
24 tems, or timber or other natural resources are lo-
25 cated; and

1 (8) the involvement of tribal governments in the
 2 protection of the homeland of the United States is
 3 essential to the comprehensive maintenance of the
 4 homeland security of the United States.

5 (b) PURPOSES.—The purposes of this Act are to en-
 6 sure that—

7 (1) the Department of Homeland Security
 8 consults with, involves, coordinates with, and in-
 9 cludes Indian tribal governments in carrying out the
 10 mission of the Department under the Homeland Se-
 11 curity Act of 2002 (Public Law 107–296); and

12 (2) Indian tribal governments participate fully
 13 in the protection of the homeland of the United
 14 States.

15 **SEC. 3. TABLE OF CONTENTS; DEFINITIONS.**

16 (a) TABLE OF CONTENTS.—The table of contents of
 17 the Homeland Security Act of 2002 (Public Law 107–296;
 18 116 Stat. 2135) is amended by striking the item relating
 19 to section 801 and inserting the following:

“Sec. 801. Office of State, Tribal, and Local Government Coordination.”.

20 (b) DEFINITIONS.—Section 2 of the Homeland Secu-
 21 rity Act of 2002 (6 U.S.C. 101) is amended—

22 (1) in paragraph (6), by inserting “tribal,”
 23 after “State,”;

24 (2) by redesignating paragraphs (9), (10), (11),
 25 (12), (13), (14), (15), and (16) as paragraphs (10),

1 (11), (12), (13), (14), (15), (16), and (19), respec-
 2 tively;

3 (3) by inserting after paragraph (8) the fol-
 4 lowing:

5 “(9) INDIAN TRIBE.—The term ‘Indian tribe’
 6 means any Indian tribe, band, nation, or other orga-
 7 nized group or community located in the continental
 8 United States (excluding the State of Alaska) that
 9 is recognized as being eligible for the special pro-
 10 grams and services provided by the United States to
 11 Indians because of their status as Indians.”; and

12 (4) by inserting after paragraph (16) (as redes-
 13 ignated by paragraph (2)) the following:

14 “(17) TRIBAL COLLEGE OR UNIVERSITY.—The
 15 term ‘tribal college or university’ has the meaning
 16 given the term in section 316(b) of the Higher Edu-
 17 cation Act of 1965 (20 U.S.C. 1059c(b)).

18 “(18) TRIBAL GOVERNMENT.—The term ‘tribal
 19 government’ means the governing body of an Indian
 20 tribe that is recognized by the Secretary of the Inte-
 21 rior.”.

22 **SEC. 4. DEPARTMENT OF HOMELAND SECURITY.**

23 (a) SECRETARY; FUNCTIONS.—Section 102 of the
 24 Homeland Security Act of 2002 (6 U.S.C. 112) (as
 25 amended by section 7402 of the Intelligence Reform and

1 Terrorism Prevention Act of 2004 (Public Law 108–458))

2 is amended—

3 (1) in subsection (c)—

4 (A) in the matter preceding paragraph (1),
5 by striking “Office of State and Local Coordi-
6 nation” and inserting “Office of State, Tribal,
7 and Local Government Coordination and Pre-
8 paredness”; and

9 (B) in paragraphs (1), (2), and (3), by in-
10 serting “, tribal,” after “State” each place it
11 appears; and

12 (2) in subsection (f)—

13 (A) in paragraph (8), by inserting “tribal,”
14 after “State,”; and

15 (B) in paragraph (10), by striking “Office
16 of State and Local Government Coordination
17 and Preparedness” and inserting “Office of
18 State, Tribal, and Local Government Coordina-
19 tion and Preparedness”.

20 (b) CONFORMING AMENDMENT.—Section 7405 of the
21 Intelligence Reform and Terrorism Prevention Act of
22 2004 (6 U.S.C. 112 note; Public Law 108–458) is amend-
23 ed by striking “Office of State and Local Government Co-
24 ordination and Preparedness” and inserting “Office of

1 State, Tribal, and Local Government Coordination and
2 Preparedness”.

3 **SEC. 5. INFORMATION ANALYSIS AND INFRASTRUCTURE**
4 **PROTECTION.**

5 (a) DIRECTORATE FOR INFORMATION ANALYSIS AND
6 INFRASTRUCTURE PROTECTION.—Section 201(d) of the
7 Homeland Security Act of 2002 (6 U.S.C. 121(d)) is
8 amended—

9 (1) in paragraphs (1), (3), (6), (7)(B), (8), (9),
10 (11), (13), and (16), by inserting “, tribal,” after
11 “State” each place it appears; and

12 (2) in paragraph (17), by inserting “tribal,”
13 after “State,”.

14 (b) ACCESS TO INFORMATION.—Section 202(d)(2) of
15 the Homeland Security Act of 2002 (6 U.S.C. 122(d)(2))
16 is amended by inserting “, tribal,” after “State”.

17 (c) PROTECTION OF VOLUNTARILY SHARED CRIT-
18 ICAL INFRASTRUCTURE INFORMATION.—Section 214 of
19 the Homeland Security Act of 2002 (6 U.S.C. 133) is
20 amended—

21 (1) in subsection (a)(1)—

22 (A) in subparagraph (D)(ii)(II), by strik-
23 ing “General Accounting Office.” and inserting
24 “Government Accountability Office;”; and

1 (B) in subparagraph (E), by inserting “,
2 tribal,” after “State” each place it appears;

3 (2) in subsection (c), by inserting “tribal,” after
4 “State,”; and

5 (3) in subsection (e)(2)(D), by inserting “, trib-
6 al,” after “State”.

7 (d) ENHANCEMENT OF NON-FEDERAL
8 CYBERSECURITY.—Section 223(1) of the Homeland Secu-
9 rity Act of 2002 (6 U.S.C. 143(1)) is amended by insert-
10 ing “, tribal,” after “State”.

11 (e) MISSION OF OFFICE; DUTIES.—Section 232 of
12 the Homeland Security Act of 2002 (6 U.S.C. 162) is
13 amended—

14 (1) in subsection (a)(2), by inserting “tribal,”
15 after “State,”;

16 (2) in subsection (b)—

17 (A) in paragraphs (2) and (3), by inserting
18 “tribal,” after “State,” each place it appears;

19 (B) in paragraph (6)—

20 (i) in the matter preceding subpara-
21 graph (A), by inserting “tribal,” after
22 “State,”; and

23 (ii) in subparagraph (H), by inserting
24 “, tribal,” after “State”; and

1 (C) in paragraphs (9), (11), and (14), by
 2 inserting “, tribal,” after “State” each place it
 3 appears; and
 4 (3) in subsection (g)(1)(A), by inserting “trib-
 5 al,” after “State,”.

6 (f) NATIONAL LAW ENFORCEMENT AND CORREC-
 7 TIONS TECHNOLOGY CENTERS.—Section 235(d) of the
 8 Homeland Security Act of 2002 (6 U.S.C. 165(d)) is
 9 amended by inserting “tribal,” after “State,”.

10 **SEC. 6. SCIENCE AND TECHNOLOGY IN SUPPORT OF HOME-**
 11 **LAND SECURITY.**

12 (a) RESPONSIBILITIES AND AUTHORITIES OF THE
 13 UNDERSECRETARY FOR SCIENCE AND TECHNOLOGY.—
 14 Section 302(6) of the Homeland Security Act of 2002 (6
 15 U.S.C. 182(6)) is amended by inserting “tribal,” after
 16 “State,”.

17 (b) CONDUCT OF CERTAIN PUBLIC HEALTH-RE-
 18 LATED ACTIVITIES.—Section 304(a) of the Homeland Se-
 19 curity Act of 2002 (6 U.S.C. 184(a)) is amended by in-
 20 serting “and the Indian Health Service” after “Public
 21 Health Service”.

22 (c) CONDUCT OF RESEARCH, DEVELOPMENT, DEM-
 23 ONSTRATION, TESTING, AND EVALUATION.—Section
 24 308(b) of the Homeland Security Act of 2002 (6 U.S.C.
 25 188(b)) is amended—

1 (1) in paragraph (1)(A), by striking “colleges,
2 universities,” and inserting “colleges and universities
3 (including tribal colleges and universities),”; and

4 (2) in paragraph (2)(B), by inserting “(includ-
5 ing tribal colleges or universities)” after “univer-
6 sities”.

7 (d) UTILIZATION OF DEPARTMENT OF ENERGY NA-
8 TIONAL LABORATORIES AND SITES IN SUPPORT OF
9 HOMELAND SECURITY ACTIVITIES.—Section 309(d) of
10 the Homeland Security Act of 2002 (6 U.S.C. 189(d)) is
11 amended by inserting “, tribal,” after “State”.

12 (e) HOMELAND SECURITY INSTITUTE.—Section
13 312(d) of the Homeland Security Act of 2002 (6 U.S.C.
14 192(d)) is amended by inserting “tribal colleges and uni-
15 versities,” after “education,”.

16 (f) TECHNOLOGY CLEARINGHOUSE TO ENCOURAGE
17 AND SUPPORT INNOVATIVE SOLUTIONS TO ENHANCE
18 HOMELAND SECURITY.—Section 313 of the Homeland
19 Security Act of 2002 (6 U.S.C. 193) is amended—

20 (1) in paragraphs (1) and (4) of subsection (b),
21 by inserting “tribal,” after “State,” each place it ap-
22 pears; and

23 (2) in subsection (c)(1), by inserting “, tribal,”
24 after “State”.

1 **SEC. 7. DIRECTORATE OF BORDER AND TRANSPORTATION**
2 **SECURITY.**

3 (a) OFFICE FOR DOMESTIC PREPAREDNESS.—Sec-
4 tion 430(c)(5) of the Homeland Security Act of 2002 (6
5 U.S.C. 238(c)(5)) is amended by inserting “, tribal,” after
6 “State”.

7 (b) REPORT ON IMPROVING ENFORCEMENT FUNC-
8 TIONS.—Section 445(b) of the Homeland Security Act of
9 2002 (6 U.S.C. 255(b)) is amended by inserting “, tribal,”
10 after “heads of State”.

11 **SEC. 8. EMERGENCY PREPAREDNESS AND RESPONSE.**

12 (a) RESPONSIBILITIES.—Section 502(5) of the
13 Homeland Security Act of 2002 (6 U.S.C. 312(5)) is
14 amended by inserting “tribal,” after “State,”.

15 (b) CONDUCT OF CERTAIN PUBLIC HEALTH-RE-
16 LATED ACTIVITIES.—Section 505(a) of the Homeland Se-
17 curity Act of 2002 (6 U.S.C. 315(a)) is amended—

18 (1) by inserting “tribal,” after “State,”; and

19 (2) by inserting “and the Indian Health Serv-
20 ice” after “Public Health Service”.

1 **SEC. 9. TREATMENT OF CHARITABLE TRUSTS FOR MEM-**
 2 **BERS OF THE ARMED FORCES OF THE**
 3 **UNITED STATES AND OTHER GOVERN-**
 4 **MENTAL ORGANIZATIONS.**

5 Section 601(c)(9)(B) of the Homeland Security Act
 6 of 2002 (6 U.S.C. 331(c)(9)(B)) is amended by inserting
 7 “tribal,” after “State,”.

8 **SEC. 10. COORDINATION WITH NON-FEDERAL ENTITIES; IN-**
 9 **SPECTOR GENERAL; UNITED STATES SECRET**
 10 **SERVICE; COAST GUARD; GENERAL PROVI-**
 11 **SIONS.**

12 (a) OFFICE FOR STATE AND LOCAL GOVERNMENT
 13 COORDINATION.—Section 801 of the Homeland Security
 14 Act of 2002 (6 U.S.C. 361) is amended—

15 (1) in the section heading, by inserting “,
 16 **TRIBAL,**” after “**STATE**”;

17 (2) in subsection (a)—

18 (A) by inserting “, Tribal,” after “Office
 19 for State”; and

20 (B) by inserting “, tribal,” after “relation-
 21 ships with State”; and

22 (3) in subsection (b), by inserting “, tribal,”
 23 after “State” each place it appears.

24 (b) DEFINITIONS FOR SUPPORT ANTI-TERRORISM BY
 25 FOSTERING EFFECTIVE TECHNOLOGIES ACT.—Section

1 865(6) of the Homeland Security Act of 2002 (6 U.S.C.
2 444(6)) is amended by inserting “, tribal,” after “State”.

3 (c) REGULATORY AUTHORITY AND PREEMPTION.—

4 Section 877(b) of the Homeland Security Act of 2002 (6
5 U.S.C. 457(b)) is amended—

6 (1) in the subsection heading, by inserting “,
7 TRIBAL,” after “STATE”; and

8 (2) by inserting “, tribal,” after “State” each
9 place it appears.

10 (d) INFORMATION SHARING.—Section 891 of the
11 Homeland Security Act of 2002 (6 U.S.C. 481) is amend-
12 ed—

13 (1) in subsection (b)—

14 (A) in paragraphs (2), (4), (5), (7), (8),
15 and (9), by inserting “, tribal,” after “State”
16 each place it appears;

17 (B) in paragraph (6)—

18 (i) by inserting “, tribal,” after “cer-
19 tain State”; and

20 (ii) by inserting “tribal,” after
21 “State,”; and

22 (C) in paragraphs (10) and (11), by insert-
23 ing “tribal,” after “State,” each place it ap-
24 pears; and

1 (2) in subsection (c), by inserting “tribal,” after
2 “State,”.

3 (e) FACILITATING HOMELAND SECURITY INFORMA-
4 TION SHARING PROCEDURES.—Section 892 of the Home-
5 land Security Act of 2002 (6 U.S.C. 482) is amended—

6 (1) in subsection (a)(1)(A), by inserting “, trib-
7 al,” after “State”;

8 (2) in paragraphs (1), (2)(D), and (6) of sub-
9 section (b), by inserting “, tribal,” after “State”
10 each place it appears;

11 (3) in subsection (c)—

12 (A) in the subsection heading, by inserting
13 “, TRIBAL,” after “STATE”; and

14 (B) by inserting “, tribal,” after “State”
15 each place it appears;

16 (4) in subsection (e), by inserting “, tribal,”
17 after “State” each place it appears;

18 (5) in subsection (f)—

19 (A) in paragraph (1), by inserting “tribal,”
20 after “State,”; and

21 (B) in paragraph (3)—

22 (i) in the matter preceding subpara-
23 graph (A), by inserting “, tribal,” after
24 “State”;

- 1 (ii) in subparagraph (A), by inserting
 2 “tribally or” after “other”;
 3 (iii) in subparagraph (B), by inserting
 4 “, tribal,” after “State”; and
 5 (iv) in subparagraph (D), by inserting
 6 “tribal,” after “State,”; and
 7 (6) in subsection (g), by inserting “, tribal,”
 8 after “State”.

9 (f) REPORT.—Section 893(a) of the Homeland Secu-
 10 rity Act of 2002 (6 U.S.C. 483(a)) is amended in the sec-
 11 ond sentence by inserting “tribal,” after “State,”.

12 **SEC. 11. DEPARTMENT OF JUSTICE DIVISIONS.**

13 Section 1114(b) of the Homeland Security Act of
 14 2002 (6 U.S.C. 532(b)) is amended by inserting “tribal,”
 15 after “State,”.

16 **SEC. 12. AMENDMENTS TO OTHER LAWS.**

17 (a) CYBER SECURITY ENHANCEMENT ACT OF
 18 2002.—

19 (1) EMERGENCY DISCLOSURE EXCEPTION.—
 20 Section 2702(b)(8) of title 18, United States Code,
 21 is amended by inserting “tribal,” after “State,”.

22 (2) PROTECTING PRIVACY.—Section 2701(b)(1)
 23 of title 18, United States Code, is amended by in-
 24 serting “or Indian tribe” after “or any State”.

1 (b) NATIONAL INSTITUTE OF JUSTICE.—Section
 2 202(c)(11) of the Omnibus Crime Control and Safe
 3 Streets Act of 1968 (42 U.S.C. 3722(c)(11)) is amended
 4 by inserting “tribal,” after “State,”.

5 (c) HOMELAND SECURITY FUNDING ANALYSIS IN
 6 PRESIDENT’S BUDGET.—Section 1105(a)(33)(A)(iii) of
 7 title 31, United States Code, is amended by inserting “,
 8 tribal,” after “State”.

9 (d) AUTHORITY TO SHARE ELECTRONIC, WIRE, AND
 10 ORAL INTERCEPTION INFORMATION.—Section 2517(8) of
 11 title 18, United States Code, is amended by inserting
 12 “tribal,” after “State,” each place it appears.

13 (e) FOREIGN INTELLIGENCE INFORMATION.—Sec-
 14 tion 203(d)(1) of the Uniting and Strengthening America
 15 by Providing Appropriate Tools Required to Intercept and
 16 Obstruct Terrorism (USA PATRIOT ACT) Act of 2001
 17 (50 U.S.C. 403–5d) is amended by inserting “tribal,”
 18 after “State,” each place it appears.

19 (f) FOREIGN INTELLIGENCE SURVEILLANCE.—

20 (1) INFORMATION ACQUIRED FROM AN ELEC-
 21 TRONIC SURVEILLANCE.—Section 106(k)(1) of the
 22 Foreign Intelligence Surveillance Act of 1978 (50
 23 U.S.C. 1806(k)(1)) is amended by inserting “or In-
 24 dian tribe” after “subdivision)”.

1 (2) INFORMATION ACQUIRED FROM A PHYSICAL
2 SEARCH.—Section 305(k)(1) of the Foreign Intel-
3 ligence Surveillance Act of 1978 (50 U.S.C.
4 1825(k)(1)) is amended by inserting “or Indian
5 tribe” after “subdivision”).

6 (g) TRANSFER OF CERTAIN SECURITY AND LAW EN-
7 FORCEMENT FUNCTIONS AND AUTHORITIES.—Section
8 1315 of title 40, United States Code (as amended by sec-
9 tion 1706(b)(1) of the Homeland Security Act of 2002
10 (Public Law 107–296; 116 Stat. 2316)), is amended—

11 (1) in subsection (d)(3), by inserting “tribal,”
12 after “State,”; and

13 (2) in subsection (e), by inserting “, tribal,”
14 after “State” each place it appears.

15 **SEC. 13. AUTHORIZATION FOR DIRECT FUNDING.**

16 The Secretary of Homeland Security may provide any
17 funds made available under the Homeland Security Act
18 of 2002 (Public Law 107–296) directly to any Indian
19 tribe, band, nation, or other organized group or commu-
20 nity located in the continental United States (excluding
21 the State of Alaska) that is recognized as being eligible
22 for the special programs and services provided by the
23 United States to Indians because of their status as Indi-
24 ans.

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